

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. S-2857

PETITION OF MONIKA MAHABERE AND LAYHILL LEARNING CENTER

OPINION OF THE BOARD
(Opinion Adopted May 22, 2013)
(Effective Date of Opinion: May 31, 2013)

Case No. S-2857 is an application for a special exception, under Section 59-G-2.13.1 (Child Day Care Facility) of the Zoning Ordinance to permit a child day care facility for up to 62 children. The subject property is Lot P2, Block 1, located at 170 Randolph Road, Silver Spring, Maryland, 20904 in the R-200 Zone. The Hearing Examiner for Montgomery County held a hearing on the application on February 1, 2013 and February 11, 2013, closed the record in the case on February 11, 2013, re-opened it for acceptance of the transcripts on February 22, 2013, and on April 30, 2013, issued a Report and Recommendation for approval of the special exception, with conditions.

Decision of the Board: **Special Exception Granted Subject to Conditions.**

The Board of Appeals considered the Report and Recommendation at its Worksession on May 22, 2013. The Board also had before it a request for Oral Argument from Rebecca Walker, Esquire, on behalf of Monika Mahabare, which Ms. Walker withdrew at the Worksession. After careful consideration and review of the record in the case, the Board slightly amends Condition 2(f), and with that change, adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. The center's enrollment is limited to 62 children, all less than six years old, and staffing is limited to 11 staff, including the director. During the first year after approval of the special exception by the Board of Appeals, enrollment is limited to 44. In the second year after Board approval, enrollment may be

increased to 55 if the Board expressly finds that petitioner has fully complied with its transportation management plan and has filed the necessary supporting documents. The enrollment limit may be further raised to full enrollment of 62 in the third year if the Board expressly finds compliance with the transportation management plan and with the document-filing requirements in ¶ 2.

2. Petitioner shall implement a transportation management plan with the following attributes:
 - a. Morning drop-offs of enrollees shall be limited to no more than 11 vehicles per half hour period between 7:00 a.m. and 9:00 a.m.
 - b. Afternoon and evening pick-ups shall be limited to 11 vehicles per half hour period between 4:00 p.m. and 6:30 p.m.
 - c. Drop-off and pick-up periods must be established by contract between petitioner and its clientele. Each contract shall specify the half-hour period during which the client is to drop-off and pick up offspring. The contract shall provide for the collection of fines at the rate of at least \$ 1.00 for each minute by which arrival at the day care center for drop off and pick up falls outside the half hour designated in the individual contract.
 - d. Petitioner shall maintain a monthly schedule of contracted arrival times grouped by half-hour periods. The twelve monthly schedules shall be submitted to the Board of Appeals on May 1, or the next business day, in 2014 and 2015.
 - e. Petitioner shall maintain a monthly account of fines collected for untimely drop-offs and pick-ups, grouped by half-hour periods. The twelve accounts shall be submitted to the Board of Appeals on May 1, or the next business day, in 2014 and 2015.
 - f. Petitioner shall designate a staff member to monitor the parking area during drop-off and pick-up periods to ensure that on-site congestion does not result in off-site vehicular queuing, and to ensure compliance with provisions (a) and (b) of this paragraph. The name of the designated staff member (and of each successor staff member) shall be filed with the Board within fifteen days of issuance by the State of Maryland of the center's license.
 - g. In no event may a child be dropped off before a staff member is present to supervise that child; nor may a child be left alone if a parent is late in making a pick-up.
3. The hours of operation throughout the year are limited to the period between 7:00 a.m. and 6:30 p.m., with the first employee arriving at 6:30 a.m., and leaving no later than 6:30 p.m., Monday through Friday.
4. Outdoor play times must be staggered and may not start prior to 9 a.m. No more than 15 children may be in the outdoor play area at a time.

5. All children must be under the direct supervision of a staff member at all times, both inside and outside the building.
6. Petitioner shall not use a public address system of any kind outside the building.
7. Physical improvements are limited to those shown on the site and landscape plans, exhibits 44 and 22(q). Petitioner may implement the alternate parking configuration depicted on exhibit 47, but only if the Department of Permitting Services certifies that the parking configuration depicted on exhibit 44 does not meet County standards. All parking near the eastern property line shall be front-in.
8. On-site lighting shall comply with all provisions of the photometric lighting plan, exhibit 56. All parking lot lights shall be extinguished between 6:30 p.m. and 7:00 a.m. All exterior house lights shall be extinguished between 6:45 p.m. and 6:45 a.m. (except that emergency lighting on the building may briefly be lit when triggered by movement sensors).
9. Petitioner may erect a sign at its front entrance limited to the size restrictions in Zoning Ordinance § 59-F.-4.9(a) and complying with all other relevant standards in Article 59-F of the Ordinance. The sign shall not be illuminated.
10. In accordance with Code § 59-G-2.13.1(a)(4), petitioner is bound by the affidavit of compliance submitted in connection with this case, exhibit 22(c), in which petitioner certifies that it will comply with and satisfy all applicable State and County requirements, correct any deficiencies found in any government inspection, and be bound by the affidavits as a condition of approval for the special exception. In particular, petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a child day care facility.
11. Petitioner shall pay \$11,700 to the Montgomery County Department of Transportation to mitigate "new" traffic generated during peak traffic periods.
12. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. In particular, before construction of the parking lot may begin, petitioner must obtain certification from the Department of Permitting Services showing that no sediment control permit and no storm-water management concept are required for petitioner's enlarged parking lot.

13. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Stanley B. Boyd, seconded by John H. Pentecost, with Carolyn J. Shawaker and David K. Perdue, Vice-Chair, in agreement and Catherine G. Titus, Chair, necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



David K. Perdue
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 31st day of May, 2013.



Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

